United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

IN THE

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

486

No. 21,976

EARL M. LAPIN,

Appellant

v.

ALBERT F. JORDAN,
Superintendent of Insurance,

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT AND JOINT APPENDIX

HERMAN MILLER
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QUESTIONS PRESENTED

The first question presented is whether the appellant, whose insurance license was revoked by the Superintendent, who invokes the provisions of Title 35-426 and 427 D.C. Code, 1967 Ed., was entitled to a *de novo* hearing by the court sitting as an equity court.

The second question is whether the appellee is entitled to a summary judgment concerning the appellant's answer to two ambiguous questions propounded in the application for a license, in (1) failing to state he had forfeited $25.00 on an electrical code violation, when requested to state whether he had been charged or convicted of an offense excluding traffic violations; and, (2) stating he had not been charged with or convicted of matters involving money matters, particularly the passing of bad checks, when in fact as a defendant in a civil suit a deed to him was vacated.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
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BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a final order of the United States District Court for the District of Columbia granting summary judgment in favor of the appellee under the provisions of Rule 56 of the Federal rules of Civil Procedure, dismissing appellant's complaint contesting the validity of an order of the appellee issued by him as Superintendent of Insurance, which order revoked the appellant's insurance

salesman's license and dismissed his application for a preliminary injunction. This Court has jurisdiction under Title 28, Section 1291 U.S.C. (1958). The Court below had jurisdiction under the provisions of Title 11-521, and Title 35-426 and 427 D.C. Code (1967), and its general jurisdiction to grant injunctions.

STATEMENT OF THE CASE

The appellant filed his complaint against appellee alleging that on January 5, 1967 he filed an application for a license as an insurance salesman with the appellee and was granted such license. The appellee, in connection with the application, caused an investigation to be made, and then granted the license. Appellant stated he answered all questions called for in said application to the best of his ability, and in so answering, in good faith, construed such questions in the light of the language used, and that his answers were truthful.

Thereafter, the appellee notified him that his answers were not truthful, and a hearing was had before appellee on November 14, 1967, at which time the appellant gave a full and complete statement in connection with his answers made to the questions in the application.

After the hearing, appellee took the matter under advisement, and on November 1, 1967, reached the following conclusions:

(a) "That he falsely stated he had never been arrested for or charged with any offense against the Laws of the District of Columbia, except for traffic violations, when in fact he had been charged and actually forfeited a $25.00 collateral fine for violating the electrical regulations."

(b) "He falsely stated he had never been charged with or accused of any irregularity in money transactions

> and particularly the giving of bad checks, but in fact there had been filed against him in the United States District Court in Civil Action 2459-64 involving a real estate transaction."

The appellant alleged in his complaint that the answers which he gave were based upon an interpretation of the questions as he saw them and that the same did not apply to, nor was he requested to give any answers to forfeiture of collateral for electrical violations as such forfeiture fell into the same category of violations as those for traffic regulations; that the forfeiture occurred in the year 1952, and he had completely forgotten about the matter.

With respect to the charges involving real estate in Civil Action 2459-64, that matter was principally connected with real estate and the court in that case made no finding against him of any irregularity involving money transactions, and that he answered all questions in this way to the best of his knowledge and honest belief.

On November 21, 1967, the appellee revoked his insurance license.

The appellant claimed in his complaint that the revocation was wrongful, fraudulent, arbitrary and capricious, for the following reasons:

(a) The findings were based on vague, indifferent, misleading and ambiguous questions.

(b) The findings were incorrect and unjustified by the evidence, in that the answers were correct as to the questions stated in the application.

(c) The findings and the revocation were arbitrary, capricious and unjust and amounted to violation of due process.

The prayers of the complaint sought a preliminary and permanent injunction restraining the appellee from revoking the appellant's

insurance salesman's license for the reasons set forth in the order of revocation; for a review and inquiry to determine the validity of the order issued by appellee revoking appellant's license; for a hearing *de novo* as provided by D.C. Code Title 35-1349. (J.A. 1, 2, 3)

Said complaint was accompanied by a motion for a preliminary injunction in which it was asserted that unless such preliminary injunction was granted the appellant would suffer irreparable harm, damage and injury. (J.A. 4)

The appellee responsively then moved for summary judgment accompanying such motion with a statement of material facts required by District Court rule 9(n), attaching Exhibits A through F in support of said motion (J.A. 5).

Exhibit A was a letter of October 23, 1967 from the appellee to the appellant, setting an oral hearing as to why appellant's license should not be revoked (J.A. 7).

Exhibit B is the application with appellant's answers (J.A. 8-9).

Exhibit C is the findings of fact entered by Judge Matthews in Civil Action 2459-64 (J.A. 10-14).

Exhibit E, a letter from appellee to appellant, findings of fact, conclusions and revocation entered by the appellee, dated November 21, 1967.

The pre-trial proceedings in Civil Actions 2459-64 and 1293-65 as consolidated, were received in evidence by the appellee (J.A. 42-47).

Upon the oral hearing before the Court below, the trial Court granted appellee's motion for summary judgment and denied appellant's motion for preliminary injunction. (J.A. 37-38).

Thereupon appellant moved for reconsideration, and on March 21, 1968, the Court denied said motion (J.A. 38-39).

Thereupon, on April 18, 1968, appellant noted his appeal (J.A. 41).

At the hearing before the appellee, the transcript of which was attached to appellee's motion for summary judgment as Exhibit D, the following evidence, in substance, was adduced. Mr. Edward Paul Lombard testified that he was Deputy Superintendent of Insurance and identified the application and answers contained in appellant's application for license. (J.A. 8-9). Thereupon he read question 7(a) and the answer, and then read question 7(b) and the answer. (J.A. 8) He stated that the application was acted upon based on the answers given. On cross-examination he was asked why traffic violations were excepted and he stated that such question had been worked on for years so that the meaning of the question would stand out and bring out the background of the applicant. He was then asked that, if the applicant was guilty of reckless driving, driving under the influence of liquor, whether such violations would have any effect on applicant's background, and he answered:

> "The question has been changed from time to time. There has been a real effort made to bring out the type of information that would seem to be called for in order for the . . . determination to be made whether a man is trustworthy or not or worthy of a license. There was, obviously, a question as to whether or not traffic matters wuld belong in such a question. One time the language 'minor' was used. I think in conferences with the Corporation Counsel's office at various times, the language was changed to more nearly bring out the information the Superintendent was seeking." (J.A. 16)

The witness was then asked if, by the exclusion of traffic violations, it was intended that the Insurance Department was not interested in the trustworthiness or untrustworthiness of an applicant if he was found guilty of driving under the influence of liquor, to which the witness, in substance, answered that the question was changed from time to time; it would produce the guidelines the insurance department needed, as to whether or not a certain kind of traffic violation would reflect a man's character more than others, that obviously for clarity all traffic violations were removed to avoid confusion in the mind of the applicant. The witness also stated that an inquiry into whether the applicant was found guilty of driving under the influence did not reflect upon his character (J.A. 16).

Thereupon the witness was asked whether the insurance department would be interested if the applicant had misrepresented himself in his application for a permit and used someone else's name, and although no objection was made by the Corporation Counsel, the appellee, in his capacity as hearing officer, refused to allow this question to be answered. A tender was made to put the question of the electrical violation in the same category as traffic violations and the appellee sustained an objection (J.A. 17).

At this hearing the appellant in substance testified that he had resided in Maryland for more than 14 years, owned his own home there, and was married, with two children. (J.A. 19) He stated he was a real estate broker since January 1963 and never had any complaints filed against him before the Real Estate Commission. He also was in the home remodeling business renovating residential property. He had previously held a contractor's license but he was no longer in that business, having given it up. (J.A. 20).

He never had a complaint made against him regarding his license. With respect to the electrical violation, he stated that on a job he was doing a workman handled some electrical work, a fact he did

not know until after it was done, and the inspector issued him a notice, and that, rather than have a controversy, even though he did have an electrician on the job, he forfeited the $25.00; that this happened about 15 or 16 years ago, and when he answered the insurance application, the electrical matter had not occurred to him, and he did not intend to deceive the insurance department by his answer. He had never been charged with a felony, and he had never been arrested even for traffic violations. He stated he had insurance licenses in both Maryland and Virginia, and he had never had any complaints in any of these jurisdictions (J.A. 23-24).

Answering the questions raised by Civil Action 2459-64 he that the Colliers were in default in their trusts and the property was being advertised for foreclosure. After he inspected the property he was not interested, but the Colliers pleaded with him to assist them. He then advanced $400.00 or $500.00 to pay the arrears and advertising charges, and they were to pay $62.50 semi-monthly, with which he would pay the trusts on the property.

He had paid the first trust $1,199.00 and the second trust $1197.00. He agreed that when the Colliers repaid him with a reasonable profit, he would re-deed the property, but they defaulted also with him. Thereafter he filed a complaint for possession. Later they were in arrears about $300.00 and a plea of title was filed which certified the case to the District Court. The trial court ordered the property restored, but did not allow any damages, either compensatory or punitive, against him, nor was an accounting ordered, but the court did allow $500.00 as attorney's fee against him. (J.A. 28-29).

Appellant accepted the finding of the Court because it was not worth the effort and expense of an appeal.

With respect to the civil action, the heart of the case was the property and signing of a deed, and that case did not involve a money transaction.

Thereafter, appellee moved for summary judgment (J.A. 5) and on January 16, 1968 the lower court granted said motion holding the appellant was not entitled to a trial *de novo.* (J.A. 37). Thereafter, on March 21, 1968, the Court denied appellant's motion for reconsideration. (J.A. 38-40). Notice of appeal was filed April 18, 1968. (J.A. 41)

STATUTES INVOLVED

Title 35-426, D.C. Code, 1967 Ed. – Suspension or revocation of License–Grounds for–Hearing–Penalty.

> The Superintendent of Insurance may suspend or revoke the license of any life insurance general agent, agent, solicitor, or broker when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation; or that the general agent, agent, solicitor, or broker has violated any insurance law of the District; or has made any misleading representations or incomplete or fraudulent comparisons of any policies or companies or concerning any companies * * * or has otherwise shown himself untrustworthy or incompetent to act as a life insurance general agent, agent, solicitor or broker. Before the Superintendent of Insurance shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf. Within thirty days after the revocation or suspension of the license or of the refusal of the Superintendent to grant a license, the general agent, agent, solicitor or broker, or the applicant aggrieved may appeal from the ruling of the Superintendent of

Insurance to the court of competent jurisdiction designated in Section 35-427. Appeals may be taken from the judgment as prescribed in section 35-427.
* * *

* * * Provided, that in lieu of revoking or suspending the license of the general agent, agent, solicitor or broker for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than $200 when in his judgment he finds that the public interest would be best served by the continuance of the license of such person.

Title 35-427 D.C. Code 1967 Ed. – Appeal from rulings of superintendent–procedure–Costs and supersedeas bond–Liability of superintendent.

Within thirty days after the revocation or suspension of the license or refusal of the superintendent to grant a license, the general agent, agent, solicitor or broker or applicant aggrieved may appeal from the ruling of the superintendent to the United States District Court for the District of Columbia, in equity wherein upon relation of the superintendent by representation of the corporation counsel the superintendent shall be designated as defendant and the general agent, agent, solicitor, or broker or applicant as plaintiff, and the said cause shall be docketed in said court and tried as an equity case. Appeals may be taken from judgment of said United States District Court for the District of Columbia to the United States Court of Appeals for the District of Columbia as in other equity cases.

D.C. Code 1967 Ed., Title 35-1340. Revocation and suspension of license–Grounds for–Notice and hearing–Evidence.

> The Superintendent may revoke or suspend the license of any policy-writing agent, soliciting agent, broker, or salaried company employee when and if, after investigation, it appears to the Superintendent that any license issued to such person was obtained by fraud or misrepresentation, or that such person has otherwise shown himself untrustworthy or incompetent to act in any of the foregoing capacities or that such person has–
>
> (a) violated any of the provisions of the insurance laws of the District; or
>
> * * * *
>
> Before the Superintendent shall revoke or suspend the license of any such person he shall give to such person an opportunity to be fully heard and to introduce evidence in his behalf: Provided, That in lieu of revoking or suspending the license of any policy-writing agent, soliciting agent, broker or salaried company employee for causes enumerated in this section after hearing as herein provided, the Superintendent may subject such person to a penalty of not more than $200 when in his judgment he finds the public interest would be best served by the continued operation of such person. * * *

STATEMENT OF POINTS

1. The lower court erred in granting summary judgment and not conducting a trial as in equity *de novo* as to whether the appellant's license should have been revoked.

2. The Court erred in granting summary judgment when the question of the appellant's state of mind was involved, which question is one of fact and not of law.

SUMMARY OF ARGUMENT

1. The complaint filed by appellant sought to contest the validity of the appellee's order revoking his license. The appellant was deprived of a trial *de novo* and a trial as in equity by the lower court's granting of a summary judgment in favor of the appellee. The decisions of this court indicate that the procedure is that of a trial *de novo,* and the granting of summary judgment destroyed this right for the appellant.

2. In the light of the uncertainty of the construction of the insurance department of the purpose of the questions claimed to be answered falsely by the appellant, and that in his own mind the appellant construed the questions contrary to the construction placed thereon by the Superintendent, an issue of fact was created as to whether the appellant was justified by his construction and whether he answered the questions honestly and without any intent to falsify; whether the questions were worded so as to create an honest doubt as to their exact meaning.

ARGUMENT

1. The Court erred in granting summary judgment which in effect destroyed completely the appellant's right to a trial de novo as a case in equity. There can be no doubt that, by the provisions of Title 35-426, D.C. Code, appeal can be made to the United States District Court for the District of Columbia to review the action of the Superintendent and that said cause shall be docketed "in said Court and *tried* as an equity case" (emphasis supplied). The procedure unquestionably has been defined in the case of *Jordan, Superintendent v. United Insurance Company of America,* 110 U.S. App. D.C. 112, 289 F.2d 778, in which Judge Bastian, in considering an appeal from a judgment of the District Court rendered in favor of

the Insurance Company against Mr. Jordan—in which Mr. Jordan denied the renewal of the Insurance Company's license—considered the Insurance Company's complaint to the effect that the Insurance Superintendent issued the Insurance Company a Certificate of Authority under Section 35-404 D.C. Code to operate as an insurance company and as to which there were annual renewals. On April 17, 1959, the Superintendent addressed a letter to the Insurance Company stating that in view of having found substantial evidence of five (5) charges, he would not renew the Insurance Company's Certificate; that a hearing was requested and held on the five (5) charges. The amended complaint avers that the Superintendent's charges were not supported by the evidence and the testimony adduced at the hearing. The Superintendent, in the case in the lower court, moved to dismiss or in the alternative for summary judgment (just as he did in our case); the District Court denied the Superintendent's motion to dismiss or for summary judgment, issued a preliminary injunction and directed a trial *de novo,* from which the Superintendent appealed.

In his answer, the Superintendent admitted the Insurance Company's right to appeal pursuant to Title 35-427, D.C. Code, and thereupon the case proceeded to a trial *de novo* in the District Court, at which witnesses were called and the administrative record offered in evidence. And at the conclusion of the case the trial court made extensive and full findings of fact and conclusions of law which included, among other things, the fact that the failure to renew the Certificate of Authority would have a substantial adverse effect upon the holders of the policies, and further found that the evidence preponderated in favor of the Insurance Company. This Court considered the narrow question of law whether a trial *de novo* in District Court was proper or whether the court should have confined itself to a review of the administrative record under the substantial evidence rule, and in affirming the judgment of the trial court, this Court stated as follows:

> "We begin with a basic proposition that once a going business has been established on the basis of a license or certificate of authority, property rights attach. [This would be similar to where a license has been issued, as in our case, to the appellant.] This means that such license or certificate may not be revoked, nor may renewal be denied, without procedural and subsequent due process of law." [Citing cases].

The defendant in that case, just as the Superintendent argues in our case, took the position that the plaintiff was not entitled to a second hearing on the merits before the District Court and that, therefore, the District Court had no jurisdiction to determine more than whether the defendant acted arbitrarily or capriciously and whether substantial evidence on the administrative record supported the defendant's conclusions. In its decision in the United Insurance case this Court stated that for its purposes it assumed, without so deciding, that the Insurance Company correctly contended that Title 35-427 is not applicable to a proceeding under Title 35-404. However, the decision culminated in the language in the third note on page 117 as follows:

> "We think that the analogy of the United States District Court for the District of Columbia, as a local Court of general jurisdiction and a District of Columbia administrative agency, to a Federal Court of general jurisdiction and a federal administrative agency, it is an apt one and that the same legal principles apply. It therefore follows that a local Court of general jurisdiction does have jurisdiction, without express statutory authorization, to review administrative action by trial de novo."

It therefore seems clear that in connection with the administrative review that the Court did have authority to hear the matter *de novo* and the granting of summary judgment eliminated the appellant's right to that procedure.

This Court further held that it followed that a trial *de novo* in the District Court is sufficient to afford due process and was properly conducted pursuant to the general jurisdiction of that Court.

In another case, *Jordan, Superintendent v. Silverman,* 111 U.S. App. D.C. 132, 294 F.2d 916, this Court had a further occasion to consider this question. In that case a suit appealing the action of the Superintendent in denying an application for a renewal was had. The District Court certified the denial and ordered a license to be issued and the Superintendent appealed. This Court in that case held that the conclusion that the refusal to renew should not be sustained was not in derogation of the statutory responsibility of the Superintendent. The same questions as now presented in our case arose as to competency and trustworthiness, and in that case, just as here, the District Court, under Section 427, tried the matter as a case in equity. The Court found by a preponderance of the evidence that the plaintiff had established his claim.

Consequently, from these decisions and the fact that the action was for a trial *de novo,* the Court should have granted such right and denied the application of the appellee for summary judgment.

2. **The Court erred in granting summary judgment in connection with the appellant's construction of the questions asked.** It is our view that the questions in the application were vague, misleading and uncertain. The first question was whether or not the appellant had been charged with any offense except a traffic violation. The charge was that the appellant failed to indicate that he had forfeited $25.00 collateral some previous year on an electrical violation. Mr. Lombard, who was the Assistant Superintendent, had quite a difficult task in explaining the reasons why traffic violations were eliminated from the question. He was unable adequately to answer whether or not an individual who was charged with and found guilty of traffic violations such as driving under the influence of liquor, or

fraudulently obtaining a driver's license would relate to misrepresentation in obtaining an insurance salesman's license. When the question eliminated traffic violations, it is our view that the appellant was within his rights to consider an electrical violation to be in the same category.

With respect to the additional question of whether or not the defendant had been involved in money matters, particularly involving bad checks, this question had a tendency to mislead the appellant in that it directed his attention to questions of this type. It was a far cry from the District Court case which involved title to property. That suit was to vacate deed, for an accounting, damages. Even though that case was not appealed, it is obvious that some of the findings were incorrect and inconsistent in that there was consideration for the deed by stopping the sale. It was apparent that money matters were not the primary subject matter, but the property. This conclusion is emphasized by the fact that no accounting was ordered; no damages were assessed. It was also obvious that the Court wanted to allow the Colliers an attorney's fee, and the only way this could be done was to make the finding which was made, in order to support an order for attorney's fee.

Nevertheless, if the question were one that was directed to any litigation, why was it necessary to direct the inquiry to money matters, particularly bad checks? The results indicate that the Superintendent was searching for criminal acts or those of a criminal nature, and the answers made were not inconsistent with an honest answer. This was a matter of intent and was an issue of fact to be determined on a full hearing with full cross-examination. Such inquiry of intent and matters of mind are questions of fact. See *Dewey v. Clark,* 86 U.S. App. D.C. 137, 180 F.2d 766, in which the state of mind concerning intent, even though there was no factual evidence which contradicted it, was declared to be a question of fact on which a mo-

tion for summary judgment was denied. Here the issue was the state of mind and intent as to whether the ambiguous questions were honestly answered, and likewise this was a question of fact not subject to being decided on a summary motion.

CONCLUSION

We respectfully urge that this case be returned to be tried *de novo*, and on the question of intent and the good faith of the appellant.

Respectfully submitted,

HERMAN MILLER
421 Fourth Street, N.W.
Washington, D.C.
Attorney for Appellant

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EARL M. LAPIN,

Plaintiff,

v.

Civil Action No.
No. 3128

ALBERT F. JORDAN,
SUPERINTENDENT OF INSURANCE

Defendant.

[Filed Dec. 11, 1967]

COMPLAINT CONTESTING VALIDITY OF ORDER OF SUPERINTENDENT OF INSURANCE AND FOR INJUNCTION

The complaint of the plaintiff, Earl M. Lapin to contest the validity of the order of Superintendent of Insurance of the District of Columbia and for temporary and permanent injunction shows unto the Court as follows:

1. Jurisdiction is conferred by the provisions of District of Columbia Code, 1967 Ed. Title 35-1340 and 1349, and the Court's general jurisdiction to grant injunctions.

2. Plaintiff is an adult citizens of the United States, a resident of the State of Maryland and files this complaint in his own right, and he is not under any legal disability.

3. The defendant is sued in his official capacity as Superintendent of Insurance for The District of Columbia.

4. Heretofore, to wit: January 5th., 1967 plaintiff filed his application for a license as an insurance salesman with the defendant and as a result thereof, the said defendant granted him such a license. This plaintiff believes, and therefore avers that in connection with said license, the defendant caused investigation to be made and based thereon issued such license.

5. This plaintiff states he answered all questions to the best of his ability, and in good faith, and in such answers construed the same, in the light of the language of such application, truthfully.

6. The plaintiff states however, that said defendant notified him that the defendant claimed such answers to the questions were not answered truthfully, and as a result of defendant's charge, the defendant held a hearing before him on November 14th 1967 at which time the plaintiff gave full and complete evidence in connection with his answers to the questions contained in the application.

7. The plaintiff states that the defendant took the matter under advisement and on November 1st, 1967 reached the following conclusions:

> (a) That he falsely stated that he had never been arrested for or charged with any offense against the Laws of the District of Columbia (which question excepted traffic violations) when in fact he had been charged and actually forfeited a $25.00 collateral fine for violating the electrical regulations.
>
> (b) He falsely stated that he had never been charged with or accused of any irregularities in money transactions and particularly the giving of bad checks but in fact their had been filed against him in the District of Columbia District Court Civil Action No. 2459 - 64 involving a real estate transaction.

8. The plaintiff states that the answers given by him were based upon a construct interpretation of the questions as he saw them and that the same did not apply to, nor was he requested to give any answers to forfeiture of collateral for electrical regulations and falling in the category of violations of traffic regulations the plaintiff further states that the violations of the electrical regulations occurred in the year of 1952 and he had completely forgotten about such matters. With respect to the charges involving real estate in said Civil Action the matter was principally connected with real estate

and the Court made no finding against the plaintiff of any irregularities involving money transactions and this plaintiff states that he answered said questions in this way and to the best of his knowledge and belief honestly.

9. The defendant by said notice of November 21st, 1967 revoked the plaintiff's insurance license.

10. The plaintiff states that the revocation was wrongfully, fraudulently, arbitrarily and capriciously entered for the following reasons:

(a) The findings of the defendant were based vague, indifferent, misleading and ambigious questions.

(b) The findings of the defendant were incorrect and unjustified by the evidence, in that the answers were correct as to the questions stated in the application.

(c) That the findings and the revocation was arbritrary, capicious and unjust and amounted to violation of due process.

WHEREFORE, the plaintiff prays (1) for process; (2) a preliminary and permanent injunction restraining the defendant from revoking the plaintiff's insurance agents license for the reasons set forth in said notice of November 21st, 1967 (3) For a review and inquiry to determine the validity of the said order of the defendant issued November 21st, 1967 (4) for a hearing de novo as provided by the District of Columbia Code Title 35 - 1349 (5) For general relief.

/s/ Earl M. Lapin

/s/ Herman Miller
Attorney for Plaintiff

[Jurat]

MOTION FOR A PRELIMINARY INJUNCTION

Comes now the plaintiff herein and moves the Court for a preliminary injunction restraining and enjoining the defendant from enforcing or otherwise preventing the plaintiff from continuing to act as an insurance salesman as set forth in the defendant's notice of November 21st, 1967, revoking the plaintiff's insurance license until the final determination of this action and as reasons therefore states as follows:

1. That unless the said preliminary injunction is granted, it will cause the plaintiff irreparable harm, damage and injury.

2. For the facts and matters set forth in the annexed Affidavit.

3. For such other and further reasons as will be presented to the Court upon the hearing of this motion.

/s/ Herman Miller

POINTS AND AUTHORITIES

This Court has inherent right and authority to grant a temporary restraining order to place the status quo so that irreparable harm will not result.

It is significant that since the plaintiff was licensed by the defendant as an insurance salesman on or about January, 1967, no evidence of any breath of a claim has been made or placed nor has the defendant charged the plaintiff with any wrong doing, misrepresentation or any other thing in connection with any acts of the plaintiff as an insurance salesman.

Herman Miller

STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

The defendant respectfully submits in compliance with Rule 9(N) of the Local Civil Rules the following material facts as to which there is no genuine issue:

The administrative record attached to the instant motion as Defendant's Exhibit "A" through "F" and by referenced made a part hereof, reflects the material facts as they exist in this case.

/s/ Charles T. Duncan
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ Patrick O'Donnell
Assistant Corporation Counsel, D.C.

MOTION OF THE DEFENDANT FOR SUMMARY JUDGMENT

Albert F. Jordan, Superintendent of Insurance, D.C., moves the Court to grant summary judgment in his favor on the ground that a reading of the complaint, the memorandum of points and authorities in support thereof and in opposition to plaintiff's motion for a preliminary injunction, other pleadings filed herein, his statement of material facts as to which there is no genuine issue, and the exhibits appearing herein, demonstrates that there is no genuine issue as to any material fact and that he is entitled to judgment as a matter of law. The defendant, by reference, incorporates as a part

hereof and attaches hereto as Defendant's Exhibits "A" through "F" the following administrative record:

Defendant's Exhibit "A" –	Letter of October 23, 1967, from Albert F. Jordan to Mr. Earl Lapin
Defendant's Exhibit "B" –	Application for license under the Life Insurance Act for the license year ending April 30, 1967, signed by plaintiff and notarized on January 5, 1967.
Defendant's Exhibit "C" –	Findings of Fact and Conclusions of Law of this Court in Civil Actions No. 2459-64 and 1293-65.
Defendant's Exhibit "D" –	Transcript of Proceedings before Superintendent of Insurance, D.C., November 14, 1967.
Defendant's Exhibit "E" –	Letter of November 21, 1967, from Albert F. Jordan to Mr. Earl Lapin (findings of fact, conclusions and order of Superintendent of Insurance).
Defendant's Exhibit "F" –	Metropolitan Police Record of Plaintiff.

/s/ Charles T. Duncan
Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation
Counsel, D. C.

/s/ Patrick O'Donnell
Assistant Corporation
Counsel, D. C.

Attorneys for Defendant

[Certificate of Service]

Certified Mail No. 629890

DEFENDANT'S EXHIBIT A

October 23, 1967

Mr. Earl M. Lapin,
4021 Wilson Boulevard
Arlington, Virginia 22203.

Dear Sir:

Pursuant to section 35-426, D. C. Code, 1961 edition, notice is hereby given to you to appear in this office on November 14, 1967, at 10 o'clock, A.M., to show cause, if any you have, why your insurance agent's license should not be suspended or revoked or other appropriate penalty imposed on the ground that the said license was obtained by misrepresentation and on the further ground that you have shown yourself to be an untrustworthy person in that in your application for the said license, sworn to by you on January 5, 1967, you falsely stated (a) that you had never been arrested for or charged with any offense against the law when as a matter of fact, on November 20, 1952, you were charged with an offense against the laws of the District of Columbia and in connection with that charge you elected to forfeit $25; and (b), on the same sworn application you falsely stated that you had never been charged with or accused of, any irregularities in money transactions when, as a matter of fact, you had been charged with and accused of irregularities in money transactions connected with an attempt by you in 1963 and 1964 illegally to gain possession of real estate owned by Mr. and Mrs. James C. Collier; and (c), in a decision of The United States District Court for the District of Columbia, Civil Action No. 2459-64, filed July 29, 1966, the Court stated that you practiced chicanery, oppression, wilfulness, misrepresentation, and gross fraud in your dealings with the said Colliers.

Very truly yours,

Albert F. Jordan
Superintendent of Insurance

DEFENDANT'S EXHIBIT B

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DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE

APPLICATION FOR LICENSE UNDER THE LIFE INSURANCE ACT
For the License Year Ending April 30, 1967

TO THE SUPERINTENDENT OF INSURANCE OF THE DISTRICT OF COLUMBIA:

The undersigned hereby makes application for license as (indicate by X type of license desired):

General Agent ☐ Solicitor ☒ Broker ☐

and for that purpose submits the following answers to the questions contained herein:

1. (a) Name of Applicant (Please Print) Earl (First) M. (Middle) Lapin (Surname)

   (b) Place of Birth Miami, Florida Date of Birth Sept 13, 1936 S.S. Number 576-20-3794

2. Business Address 1021 (Number) Wilson Boulevard (Street) Arlington, Va. (City)

3. Residence Address 2412 Lillian Drive (Number) Silver Spring (Street) Maryland 20902 (City)

4. Occupation for the past 5 years Real Estate Residential Remodeling

5. Is this application primarily for the purpose of writing insurance on your own life, the life of a relative, an employer, an associate in business, or any other individual risk? No

6. (a) Has any insurance department or any other department, public official, or court, at any time suspended, cancelled, revoked, or refused to issue or renew, any license or permit of any kind applied for by you or issued to you to engage in the business of insurance or to pursue any other trade, calling, or profession? No.

   (b) Has any insurance company ever cancelled any contract of employment made with you? No.

   (c) Have you ever been dishonorably discharged from any branch of the Armed Services of the United States? No. [If answer to (a), (b), or (c) is "Yes", give full particulars on an attached sheet.]

7. (a) Exclusive of all traffic violations, have you ever been *arrested* for, *charged* with, or *convicted* of *any offense whatever* against the laws of the District of Columbia, the United States Government, or of any other jurisdiction? No

   (b) State nature of offense and give all dates and penalties: No

8. Does any insurance company, agent, or broker, claim that you are now indebted to it or to him for past due amounts under any agency contract or otherwise? No. If so, state the name of the claimant, the nature of the claim, and your defense thereto

8 (A) Have you ever been charged with or accused of, any irregularities in money transactions including, but not limited to, the giving of worthless checks? (If so, give full particulars on an attached sheet.) No.

9. What insurance companies and agencies have you represented as a licensed agent? (Give dates and places by cities and states) New [illegible] Life Ins. Co. Dec 2[illegible]

9. (A) What insurance instruction have you had or do you expect to receive? [illegible] - My Life Insurance Course

10. (a) Are you now or have you ever been a member of the Communist Party or of any other organization having as an objective the altering of the form of government of the United States by unconstitutional means? No

Form [illegible] (Rev. 5-61)

MAKE CHECK PAYABLE TO D.C. TREASURER $ 96402
of 30980

DEFENDANT'S EXHIBIT "B"
Civil Action No. 3128-67

(b) Are you now or have you ever been a member of any organization which is included on the subversive list of the Attorney General of the United States? No.

(c) Have you ever refused on constitutional grounds to give testimony before any court, grand jury, or other duly authorized tribunal? No.

11. Are you familiar with the life insurance laws of the District of Columbia and with the provisions of the contracts which you will negotiate if the license hereby applied for is issued to you? Yes.

12. Did you personally fill out this application? Yes.

I swear that the foregoing statements are true to the best of my information, knowledge, and belief.

IN WITNESS WHEREOF I have hereunto set my hand this 5 day of January, 1967

Earl M. Lapin
(Signature of Applicant)

~~DISTRICT OF COLUMBIA~~, ss:

I, Wilfred Medley, a Notary Public in and for the State of Va, Arlington Co. do hereby certify that Earl M. Lapin, whose name is signed to the foregoing application bearing date of the 5th day of January, 1967, personally appeared before me in said Arlington Co. Va., the said Earl M. Lapin being personally well known to me as the person who executed the foregoing application in my presence and on oath made before me acknowledged the same to be his act and deed.

Given under my hand and official seal this 5th day of January, 1967

My commission expires: June 13, 1969

Wilfred Medley
Notary Public

ENDORSEMENT OF COMPANY REPRESENTATIVE AUTHORIZED TO APPOINT GENERAL AGENTS OR SOLICITORS

I HEREBY CERTIFY (a) that I have investigated the character, record, and business standing of the applicant named herein, who is personally known to me, and have also examined this application which he personally filled out; (b) that he has been appointed to act in the capacity involved by the license hereby applied for; (c) that I have satisfied myself that he is trustworthy and qualified to act in that capacity and will so hold himself out in good faith. *I vouch for him.*

William H. Linz Jr.
(Signature of company representative)

New York Life Ins. Co.
(Name of company)

General Manager
(Title of such representative)

(Applicants for broker's license must have the following endorsements filled out by citizens of the District of Columbia.)

THREE ENDORSEMENTS REQUIRED

We, the undersigned residents of the District of Columbia, are personally acquainted with the applicant and believe him to be a man of good business standing and integrity. We hereby endorse him as one having experience and sufficient knowledge of life underwriting, and worthy of having an insurance broker's license.

_____ _____
(Address)

_____ _____
(Address)

_____ _____
(Address)

7 cm

DEFENDANT'S EXHIBIT C

FINDINGS OF FACT AND CONCLUSION OF LAW

These actions were consolidated for trial and duly came on for hearing. In Civil Action 2459-64, Mr. and Mrs. Collier, plaintiffs, who are husband and wife, seek to have set aside a deed from them to the defendant, Mr. Lapin, on the ground that the deed was obtained from them by fraud, the property involved being Lot 79 in Square 3520, known as premises 49 Quincy Place, N.E. in the District of Columbia. The plaintiffs also seek an accounting, damages and costs. On the other hand, the defendant contends that the plaintiffs knowingly agreed to and did convey the property to him, that he then agreed to sell it to them, that they breached such agreement, and he asserts that they are entitled to no relief. In the other cases — Civil Action 1293-65 — Mr. Lapin seeks possession of the property, and Mr. and Mrs. Collier have entered therein a plea of title.

Upon consideration of the Pre-Trial Proceedings, the stipulations of the parties, the testimony adduced at the hearing, the exhibits received in evidence, and counsel having been heard, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. James Clarence Collier and Annie Mae Collier in 1959 had purchased for $11,950.00, Lot 79, Square 3520, improved by premises known as 49 Quincy Place, N.E. in the District of Columbia, and as of April 26, 1963, were the owners of record as tenants by the entirety of said real estate, and were occupying it as their home.

2. On April 26, 1963 a total principal sum of $9,806.09 was owed by the Colliers on notes secured by first and second deeds of trust on said property. They were at this time in default on said notes to the extent of $389.00, and a foreclosure sale was advertised. Shortly before April 26, 1963 the Colliers were approached by the defendant Lapin, who offered to assist them in preventing a foreclosure on their home.

3. The defendant, Mr. Lapin, represented to the Colliers that payments to him by them of $136.50 each month would be necessary in order for him to save their home and that certain papers must be signed. On April 26, 1963 the Colliers paid Mr. Lapin $100.00 in cash toward the first monthly payment of $136.50. (The monthly payment of $136.50 was $25.00 in excess of the monthly payments on the two trusts.) Also on April 26, 1963 the Colliers signed some papers which included, among other things, a deed to Mr. Lapin of their property.

4. The Colliers have had minimal education and are ignorant of real estate and general business procedures. James Collier works as a janitor and Annie Mae Collier works as a packing plant laborer, and their work experience has been as unskilled laborers. Because of their patent lack of education and business experience they were and are subject to undue influence and overreaching by those of greater education and experience.

5. The defendant, Mr. Lapin, is an educated man, experienced in real estate matters, the holder of a real estate broker's license in the District of Columbia and the State of Maryland, and knowledgeable in business and real estate matters.

6. The Colliers did not understand, believe, or know that they were signing a deed to their property and at no time did they intend

to convey their property to the defendant Mr. Lapin. They were led by his representations to believe that he meant to save their home for them, and that he would do so by means of the $136.50 monthly payment they were to make to him, that it would cover the regular monthly payments on the trusts amounting to $111.50 plus an additional $25.00 monthly which additional amount Mr. Lapin was to retain each month until he had been reimbursed for his expenditures in warding off the threatened foreclosure and until he had received reasonable compensation for his services. The signatures of Mr. and Mrs. Collier on the deed to Mr. Lapin were obtained by fraud and misrepresentation as to the import and purposes of the papers they signed.

7. The papers which Mr. Lapin induced the Colliers to sign on April 26, 1963 under the pretext that he was saving their property from foreclosure for them were: (1) a contract to sell the property to him; (2) a deed conveying the property to him; (3) an agreement whereby Mr. Lapin was to sell the property to the Colliers and to give them a deed thereto upon payment of the entire purchase price including the two abovementioned trusts.

8. No consideration passed to the Colliers from Mr. Lapin for the contract to sell or for the deed. In other words, Mr. Lapin, without paying the Colliers anything therefor, and without having advanced any money in their behalf, got a deed to their property, and in addition obtained a contract from them whereby they were to buy the property from him at a substantial amount over and above the trusts thereon.

9. In October 1963 Mr. Lapin sued the Colliers in the Landlord and Tenant Branch of the Court of General Sessions for possession of the real estate claiming that $204.75 rent was due from them as

a monthly tenant for the period September 1, 1963 to October 15, 1963. (This $204.75 suggests a rate of $136.50 per month.) The Colliers made payment to Mr. Lapin and remained in the premises. Even at this time the Colliers were ignorant of the true nature of the papers Mr. Lapin had caused them to sign, and the litigation last above referred to apparently did not alert them to the chicanery of Mr. Lapin (presumably because persons of minimal education like the Colliers commonly refer to trust payments as rent payments).

10. On September 11, 1964, Mr. Lapin addressed a letter to the Colliers advising them that he was the landlord of the premises occupied by them as "tenant by the month," and giving them 30 days notice to vacate the premises, said notice to expire October 14, 1964. Prior to the expiration date of the notice, however, the Colliers had obtained a lawyer and had learned from him that Mr. Lapin had gotten a deed to their property. The institution of Civil Action 2459-64 followed on October 7, 1964.

11. For some period of time the Colliers paid to Mr. Lapin the sum of $136.50 per month. Up to October 1964 the total sum paid to Mr. Lapin by the Colliers was $2,396.31. As that amount has been applied on the property no accounting is due from Mr. Lapin to the Colliers by reason of said $2,396.31. The Colliers have remained in possession of the property and they resumed direct payments under the first and second trusts about the time of the filing of the action to set aside the deed.

12. The action of Mr. Lapin in this case was characterized by oppression, wilfulness, and fraud, and accordingly, this is a proper case for the allowance of a counsel fee. Schlein v. Smith, 82 App. D.C. 42, 160 F.2d 22.

CONCLUSIONS OF LAW

1. There was no consideration for the deed from the Colliers to Mr. Lapin.

2. The deed was obtained from the Colliers by means of gross fraud on the part of Mr. Lapin.

3. Earl M. Lapin should be divested of all right, title and interest in and to said real estate, and title to same should be vested in James Collier and Annie Mae Collier as tenants by the entireties.

4. Under the circumstances the Colliers are entitled to counsel fees.

5. The plea of title in Civil Action No. 1293-65 is valid and judgment on the complaint of Earl M. Lapin, plaintiff therein, for possession of real estate should be for the Colliers, defendants therein.

6. The Colliers as to the prevailing parties are entitled to their costs to be taxed by the Clerk of the Court.

/s/ Burnita S. Matthews
Judge

July 28, 1966

DEFENDANT'S EXHIBIT D

[5] THE SUPERINTENDENT: The objection is overruled. You may answer the question.

A. The question has been changed from time to time. There has been a real effort made to bring out the type of information that would seem to be called for in order for the—a determination to be made as to whether a man is trustworthy or not and worthy of a license. There was, obviously, a question as to whether or not traffic matters would belong in such a question. At one time the language "minor" was used. I think in conferences with the Corporation Counsel's Office at various times, the language has been changed to more nearly bring out the information the Superintendent is really seeking.

Q. Then you don't think this question is intended to bring out the fact that if the man or an applicant had been found guilty of reckless driving, or driving while under the influence of liquor, or without a license, or on a revoked permit, this would have no effect on your determination as to his trustworthiness?

MR. O'DONNELL: I object to the question.

* * *

THE SUPERINTENDENT: I think there is merit to your objection, Mr. O'Donnell, but we, in matters of this sort, we always try to lean over backwards in order that the respondent may have every opportunity to defend himself. In a [6] court of law your objection undoubtedly would be sustained, but here we are as indulgent as we possibly can be.

MR. MILLER: I will rephrase my question and break it down. This question 7(a), the exclusion of traffic violations, was it intended that the Insurance Department was not interested in the untrustworthiness or the trustworthiness of an applicant if he was found guilty of driving under the influence of liquor?

* * *

A. Well, as I mentioned before, the question has been changed from time to time so that the–, it would produce the guidelines we needed, as to whether or not a certain kind of traffic violation would reflect a man's character more than others, obviously, they would but I really believe that it was the clarity–, for clarity, that all traffic violations was removed from that because it was too–, so as to avoid confusion in the mind of the applicant when he was completing it before the company man who, of course, had already checked the man out.

Q. Now limiting our inquiry to the date this application was made so that there won't be any variations about the question that's asked, is it the position [7] of the Insurance Department that a man driving under the influence of liquor and found guilty, that does not reflect upon his unworthiness? A. I would say no, the department would not take that position.

Q. How about when he misrepresented in the application for a permit and used somebody else's name would you have no interest in his unworthiness in that respect?

THE SUPERINTENDENT: Mr. Miller, I think your question is largely irrelevant. There is nothing in this hearing which questions the legality of all manner of misdeeds that this man has committed. He is not charged with reckless driving. The department has stated no position with respect to that and I don't know offhand why Mr. Lombard should defend or explain a position which is not relevant to the issues here to be decided. Can you tell me why?

MR. MILLER: Let me–, let me make an offer. Mr. Lapin is charged with the fact that he answered "no" to a question No. 7(a) when, in fact, he elected to forfeit $25 in violation of a municipal regulation to wit–, the record which was introduced where he elected to forfeit $25 because he did not have an electrical permit. I put this in the same class–, classification as a traffic violation, you see.

THE SUPERINTENDENT: You are taking the position that the question should not have been asked?

MR. MILLER: I am taking the position that if the traffic violations are excluded then all other violations of municipal regulations should be excluded because of–, there are many housing violations, many electrical violations, plumbing violations and–which really don't go to the character of the individual.

THE SUPERINTENDENT: Mr. Miller, as I understand the narrow question [8] that has to be decided at this point is whether or not your client truthfully answered the question as put; it is not whether the department should have asked a broader question or should in fact have asked this question. The department did ask this question and your client answered the question, and we are to determine whether he answered it truthfully or not.

MR. MILLER: Well of course I will connect it up, but my position is that if you exclude the traffic violations and you meant to include violations of all other municipal requirements, then your question is misleading and entraps an individual because he could classify municipal violations which really have nothing to do with moral turpitude, believing that this is not required in the answer.

* * *

THE SUPERINTENDENT: The fact remains that he was asked a certain question and that he did answer that question under oath and the question essentially is, have you ever been charged with or arrested for any offense whatever against the laws of the District of Columbia. Now he raised no objection to the question that I know of, and he put a very legible "no" in answer to it and he swore to it. Now it seems to me that it is beside the point to argue that he should have been asked a different question. He was asked this question.

MR. MILLER: So then I take it you sustain the objection?

THE SUPERINTENDENT: Unless you can begin to show more relevance than you have.

MR. MILLER: My tender of proof on this is that Mr. Lapin regarded the [9] violation of a municipal requirement with respect to no permit on the electrical code in the same category as traffic violations.

* * *

Q. I'm awfully sorry, Mr. Lombard, I am very sorry. I will ask you, sir, with respect to the question 8(A) and specifically with respect to Civil Action 2459-64, in considering this question and the information supplied, is the construction of the Insurance Department that it dealt mostly with obtaining money under false pretenses or the giving of bad checks rather than questions dealing with real estate issues? A. Well the fact that it asks, "Have you ever been charged with or accused of, any irregularities in money transactions including, but not limited to, the giving of worthless checks?" would indicate that it goes beyond worthless checks, and the fact that this "charged with" is separated from the police charge, [10] it probably would seem also to gather it into a different area.

Q. All right, sir. Now, on the application, I think there is a reference to the fact that Mr. Lapin had been licensed by the Insurance Department of Maryland and Virginia—I think that's on there, is it not? A. Yes, sir.

Q. Did you make any check with either of those departments of Virginia or Maryland with respect to any answers that Mr. Lapin made in the quest of getting his license there? A. No; let me amend, too, my answer a moment ago, I see reference on Mr. Lapin's application "New York Life Ins. Co. Dec. 28, 1966, 4021 Wilson Blvd. Arlington, Virginia", but it does not mention states, whether Maryland or Virginia and, to answer your current question, we do not check each applicant with the nearby states or any of the 50 states, we do rely on his sworn statement.

Q. Well if he was representing an insurance company prior to the issuance of an application in the District of Columbia, of course, that would be a violation of law here? A. Yes, sir.

Q. Do you know whether or not any consideration was given to that answer as to whether he held a license in the United States? A. To the extent that we waived the examination based on this statement. As I say, we rely on this application, it is our one tool.

* * *

[11] Q. Do you have any information in your file, whether it's in the application or not, but in the entire file, whether or not Mr. Lapin holds a real estate broker's license under the Real Estate Commission here? A. As to whether it's in the file or not, if that's the specific question, I at the moment can't place whether it's in the file or not. I do have knowledge that—I have been told at least, that he does hold a license in the Real Estate Section under the Occupations and Professions Department.

* * *

MR. O'DONNELL: Based on Mr. Lombard's answer to my final question, that's the Government's case, and we rest.

* * *

DIRECT EXAMINATION OF MR. LAPIN BY MR. MILLER:

Q. Now, Mr. Lombard, I mean, Mr. Lapin, what is your full name? A. Earl Lapin—Earl M. Lapin.

* * *

Q. And where do you live, Mr. Lapin? A. 2418 Lillian Drive, Silver Spring, Maryland.

Q. And how long have you lived there? A. About 14 years.

[12] Q. Do you own the home? A. Yes.

Q. And how long have you been—how long ago did you get the title to the property? A. I think it's 12 years.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Two.

Q. Now prior to making this application for an insurance license, what was the extent of your livelihood? What did you do for a living? A. I was a real estate broker in the District of Columbia.

Q. And when were you licensed as a real estate broker? A. I think it was in January of '63.

Q. And have you been continuously licensed as a real estate broker since? A. Yes.

Q. And in connection with your real estate activities, have any complaints of any nature been lodged against you with the Real Estate Commission? A. No.

Q. Now were there any other occupations that you had prior to the making of this application? A. No. For many years I was in the remodeling and renovating business in this city, doing remodeling and renovation work in mostly residential property.

Q. Were you the proprietor of that business or did you work for somebody? A. No; I was associated with several different people over the many years.

* * *

[13] Q. Do you have a contractor's license that you're required by the District of Columbia to have? In connection with that activity? A. Not now. No.

Q. Did you have? A. But I had; yes.

Q. When did you get that? A. Well, I think I was engaged in the business before the regulations in reference to a license were enacted; so I got the license the first year it was required.

Q. How long did you hold such a license? A. I'm not certain; I'd say 3 or 4 years.

Q. And could you tell us why you don't have such a license now? A. I'm not in that business.

* * *

Q. Oh, but what did you do with the license? A. I think I just failed to renew it for the reason, I think I was engaged in another activity and I didn't need it.

Q. During the time you were acting as a contractor or under that license, were any complaints of any nature filed against you with the license—Department of License Inspections?

* * *

[14] A. No, never.

Q. What were the circumstances or what occurred with respect to this violation of the electrical code? A. Well, we were remodeling a residential building in northeast Washington and it was a rather extensive renovation and the electric light fixtures had been removed because we were going to install new ones, and the new fixtures were on the job and one of the carpenters on the job thought he was being a hero one today—the man who lived there had been complaining about the fact that he didn't have lights. So this guy volunteered to hang the light fixtures for him and the—, when the electrical inspector came on the job, he found that the light fixtures had been hung. He got all worked up about it because the man who had hung the fixtures, had hung them without first getting an electrical contractor.

Q. Did you have an electrician in connection with that job? A. Yes, sure.

Q. But—was he hired before this work was done? A. Certainly.

Q. But this man who hung the lights, was he an electrical contractor? A. No.

Q. Who was he working for, an employee of? [15] A. He was working for our firm as a contractor—as a carpenter, so he did something that was certainly unauthorized, but he done it, so it was my responsibility.

Q. Were you present when he did it? A. Course not, I wouldn't let him do that.

Q. Did you tell him to do it? A. No.

Q. And this happened when, can you recall? A. I don't even remember it—15 or 16 years ago.

Q. And when you made this application for the insurance license, did you remember that particular incident? A. No, it didn't even occur to me.

Q. With respect to this question 7(a) and not having that in mind, of course you didn't answer it? A. Well at the time that it happened, you know, it was just a nuisance, as I said, I was caught in this bad situation an employee had done something that he was strictly not authorized to do and he was my employee and he had done it and I was saddled with the responsibility, so we had to pay the collateral and as far as I was concerned, that was the end of it, and it never occurred to me that I had committed a crime, that I needed a lawyer, that I was a criminal. I'm not a lawyer.

Q. In answering that question 7(a) did you answer it "no" with the express intent to deceive the department? A. Of course not.

Q. Did you know, did you remember it and know about it but just decide not [16] to answer it nonetheless? A. No, it never occurred to me to think about it; I certainly hadn't thought about that matter for many, many years.

Q. All right. Have you ever been charged with a felony or some kind? A. No.

Q. Have you ever been convicted of a felony? A. No.

Q. Were you ever arrested for any other thing other than all traffic violations and this here one? A. Never been arrested for that.

Q. Well what happened? When you paid the fine? A. As I remember, the electrical contractor—inspector had asked me to come down to the, I think it's the District, is that the court house down there? And we went to the Corporation Counsel, had a hearing at

the counter before one of the fellows down there, and he said I had to pay a fine.

Q. Now do you have any other insurance licenses from any other jurisdictions? A. Yes, I'm licensed in the State of Maryland and Virginia.

Q. And do you work for other companies in those jurisdictions other than the one you work for in Washington; A. No; no, sir.

Q. How long have you been licensed in Maryland. A. I think I was first licensed in January of this year—'67.

Q. Before the license application here? A. Yes, I think it was on the basis of the fact that I had a license in [17] Maryland, that was my residence, and I was issued a license here without an exam, I don't know.

Q. Did you make an application to the Maryland Department of Insurance? A. Sure.

Q. Could you tell us from your best recollection whether or not that application was similar to this particular one? A. Similarly, yes.

Q. Do you also have a license in Virginia? A. Yes.

Q. Did you ever live in Virginia? A. No.

Q. And did you make an application similar to this particular application? A. Yes.

* * *

Q. Has any complaint of any kind been made against you either informally by way of letter or directly to the Insurance Commissioner of Maryland about any conduct that you may have been engaged in with respect to insurance activities? A. No, never.

Q. How about the same question with respect to Maryland—I mean, Virginia? A. No.

Q. Have you ever been accused or charged or any letter written about you [18] about your activities, dealings with the

Insurance Commissioner of the District of Columbia? A. Not to my knowledge.

Q. Other than this proceeding here? A. No.

Q. Now, Mr. Lapin, getting over to this case of civil action 2459-64. A. Yes.

* * *

A. What happened was that I became involved with these people, Mr. and Mrs. Collier.

Q. And when you say "involved," what do you mean? A. Well at the time that I first met them they owned the property on Quincy Street, N.E., and the trusts on this property were in default and the property was being advertised in the paper for foreclosure.

Q. How many trusts were there on the property? A. There were two.

Q. Do you know who held them? A. I think Perpetual held the first and the second by somebody else, the second was held by, I think, Sol Lehrman.

* * *

Q. How did you get to know the Colliers? A. To the best of my recollection, we were—I was recommended to them by somebody; I think it was a fellow who worked for a contracting company, [19] who had had occasion to talk, or meet, or to know these people, somehow, he was aware of the fact that they were having a problem, and he suggested that they get in touch with me, that I might help them.

Q. I see, and then you went over to see them, of course, to have a discussion with them about their problem? A. Well I went over there, and I was aware of the fact that the property was being advertised for foreclosure and the thing that I had in mind when I went to see them was about the possibility of buying this property from them.

Q. Do you know whether the property was being advertised under the first trust or the second? A. It was the second trust at the time.

Q. And when you went over to see them, did you ascertain from them the status of the first trust as to whether that was up-to-date or not with the Perpetual? A. I can't recall whether they told me or that I had already check it–, checked it with Perpetual but at any rate the first trust was also delinquent several months.

Q. Do you know what the payments were a month on the first trust? A. As I recall the payments on the two mortgages together were about $100 monthly, but exactly what the monthly payment was on each one, I don't recall.

Q. Do you remember whether or not what delinquency existed on the second trust, how many payments were in arrears? A. Oh, I think 4 or 5.

Q. But you said the ad was in the paper at the time you saw them? [20] A. Oh, yes.

Q. All right; now what was your arrangement with them? A. Well after I saw the property and the bad–poor condition that it was in, I really wasn't interested, and they begged me to do something to help them, and so finally we worked out this arrangement where I would take title to the property and give them–, buy the property–, in other words, for the balances on the trusts, and I would give them an opportunity to buy it back over a period of years by making monthly payments that would be $25 a month more than they were paying at the time.

Q. Was this understanding that you made with them in writing? A. Sure. In fact we didn't agree to it right then. I insisted that they think about it and talk to somebody about it. I went and talked to my own attorney about it and he told me it was kind of a hairbrained thing to do.

Q. Well, you did make the deal though? A. Yes, the next day he called me and told me that this was what he wanted to do; he wanted to do it right away before the foreclosure.

Q. And then did you make arrangements to stop the sale? A. Oh, sure, when we delivered the deed, which they signed; the contract of sale, which they signed; and then I put up about $500 or $600 to pay the delinquent notes and pay the trustee's fees and the auctioneer, and so forth, and stopped the sale.

Q. All right; now, after that occurred, they made a payment to you of the combined first and second trusts plus $25 a month? A. Yes, they were paying, I think, $62.50 twice a month.

Q. And over a period of time you paid to the Perpetual, how much, do [21] you remember? A. I don't remember the exact figures but I can tell you that over the course of the time I was involved with them I paid several hundred dollars more in payments on the first and second trusts than I got back from them.

Q. I have a copy of the pretrial order in the case which I will show counsel first, and ask you if it will help refresh your memory, which I will identify as Respondent's Exhibit No. 1.

(Respondent's Exhibit No. 1 marked.)

Q. I hand you a copy of the pretrial order in that proceeding, and can you tell from it how much over the period of time until the pretrial was held did you pay to the Perpetual Building Association? A. $1197.

Q. How about the second trust? A. $1199.

Q. And were the payments up-to-date on both of those trusts at that time? A. At this?

Q. Yes. A. Sure.

Q. Now with respect to the payments that the Colliers were paying you, had they paid their payments to you promptly and regularly? A. No, absolutely not. They did for about maybe 3 or 4 months and then they fell behind–

* * *

A. They did not pay the payments the way they had promised that [22] they would.

Q. Now by reason of the fact they did not make any payments to you, did you file any proceedings against them? A. Yes, after about a year, struggling with them about the payments, I went to the Landlords and Tenants Court to file an action there and asked for possession of the property.

Q. All right; how many times did you have to do that? A. Twice.

Q. Now in the first instance when you filed the Landlord and Tenant case, what happened to that case? A. They come into court and they had an attorney and I got a judgment for protection.

Q. Who was the attorney, do you remember? A. Gorwitz—

* * *

Q. Now did they pay the amount that you claimed in the first case? A. No. They were delinquent at the time and they didn't tender anything.

Q. Well did there come a time when they straightened the first case out? A. Oh yeah after the judge had directed that I could be entitled to possession of the property. Mrs. Collier begged me not to do this that she would see to it personally and that she would make up the arrears and so forth, so I really wasn't interested in taking the property, so, fine, I agreed to that, and they did for a [23] while, they paid the payments, and then we went through the same thing all over again.

Q. Do you know how many, how much in dollars and cents they were in arrears at the time you filed the first case? A. I couldn't swear to it, but I'd say a few, maybe $300.

Q. Now how soon after that did you have to file the second case? A. Well we went through this for another year.

Q. You did—and then you filed the second case? A. Uh-huh.

Q. And how much were they–, how much did you claim they were then in arrears?

* * *

A. Maybe it was $400, I don't know.

Q. All right. To that complaint they filed a clear title? A. Right.

Q. And that certification to the District Court is civil action No. 24–, er–No. 1293-65? Is that correct? A. Yes.

Q. Now with respect to the circumstances surrounding getting the deed from them, where was that deed executed? A. I believe that we went, it was night when I saw them, and we went to a notary in a drugstore in northeast Washington.

[24] Q. Did you know the notary? Before that? A. Not personally, no. In fact, I think we had some problem in finding a notary and spent some time finding him–I just don't recall.

Q. I notice that that deed is dated October the 6th, 1959, and this pretrial order was March the 22nd, 1966; however, according to the indication of the number, it looks like the case was filed in 1964, the latter part. Can you tell us, between October 6, 1959, and sometime in the year of 1964, whether the Colliers had ever made any complaint about this transaction that you "done them out of the property?" A. No, oh, no.

Q. When was the first time you heard that they–, the claim was made that they were done out of the property?

A. The second time that we went to court, at the Landlord and Tenant Court, * * *

* * *

Q. Mr. Lapin, other than the $500 that the court ordered you to pay for [25] counsel fees for the Colliers, were you ordered, or did you in any way pay any other moneys back to the Colliers other than to restore the property to them? A. Pay back, pay

back, I don't think—I put out more money than I have received, no, I didn't.

Q. Then your answer is that you did not pay them any other money, other than the $500 attorney fees? A. Right.

Q. I'd like to offer this copy of the pretrial order which has been marked for my case Respondent's Exhibit No. 1.

MR. O'DONNELL: Insofar as the undisputed por—facts of the pretrial order, I have no object; there are all sorts of contentions that he paid—such contentions are only of the party who was there at the pretrial; but under the undisputed facts portion, I don't have any objection.

MR. MILLER: Well my reason for offering this is, I understand that we're not challenging the judgment, but this is a proceeding, as I understand it, to test the unworthiness of Mr. Lapin and these contentions were made at a time when this matter never came over his head. I think the Commission certainly ought to have his side of it to see what had happened in that case and what occurred because the finding of fact may indicate that mon—, some money had to be paid, and when you read it together with the finding of fact and the judgment, I think it helps to explain his side. That's my position.

MR. O'DONNELL: In that frame of reference the contentions are set forth by the lawyer, but the additional part of the pretrial statement for what it is worth—and that it was a pretrial statement, we wouldn't object to it being placed [26] in evidence.

(Respondent's Exhibit No. 1 marked.)

THE SUPERINTENDENT: It will be received.

* * *

CROSS-EXAMINATION OF MR. LAPIN BY MR. O'DONNELL:

Q. Mr. Lapin, did Judge Matthews find in this case of your—that your behavior was categorized by oppression, wilfulness, and fraud?

MR. MILLER: Well now I object to that because the exhibit speaks for itself and, certainly, that's the best evidence as to what she characterized, it's in evidence.

THE SUPERINTENDENT: Objection sustained.

Q. I will withdraw that. Mr. Lapin, would you tell me this, did you ever file an appeal to either of these two decisions? A. No.

* * *

Q. Now in relation to question No. 7 which was talking about the violations—the first of the violations you've testified that you had no knowledge that you were accused of a crime, if you will, the specific question states, in violation of crime or any offense whatsoever, did you characterize the charge under which you forfeited $25 as a violation of any sort? A. The same thing as I might be talking about a violation of the traffic law, like a parking ticket or something.

[27] Q. So that you state that this lawsuit which has been testified to in some length involved money transactions? A. The heart of the whole matter was their contention that they didn't know they were signing a deed. Now the matter of the money, they never claimed that they had given me more money than I had paid on their account or that I had done them out of any cash. The whole thing turned on the question of, were they aware of the fact that they were signing a deed. Now, of course, they were but they swore they weren't and if I were really interested in taking that property when I had the first judgment from the Landlord and Tenants Court, I had every legal right, under the color of a legal right, to throw them out and take it but I didn't want their property and I didn't intend to defraud them out of anything.

Q. So it's your testimony the, sir, is it, that this lawsuit did not involve money transactions per se, in any way? A. That's right? that's right.

* * *

THE SUPERINTENDENT: Mr. Lapin, are you saying that this lawsuit had nothing to do with money transactions?

MR. LAPIN: That was my understanding that the dispute was about the fact that they alleged that they had been tricked, they didn't understand that they were signing a deed.

THE SUPERINTENDENT: Well, isn't it a fact that the relationship that came about between you and the Colliers involved a payment of money? I think you just testified that they were supposed to pay you some money and [28] they didn't pay you?

MR. LAPIN: That's right.

THE SUPERINTENDENT: Isn't that a money transaction?

MR. LAPIN: That wasn't the essence of this suit here.

THE SUPERINTENDENT: Regardless of what the essence is, did this or did it not involve a money transaction?

MR. LAPIN: The way I understand it, the dispute was about the title not about the money.

THE SUPERINTENDENT: I'm not talking about what the dispute was. Is this a true statement, and I am reading from the court's findings of fact and conclusions of law, findings of fact No. 3:

"The defendant, Mr. Lapin, represented to the Colliers that payments to him by them of $136.50 each month would be necessary in order for him to save their home."

MR. LAPIN: No, it is not true.

THE SUPERINTENDENT: What's not true about that?

MR. LAPIN: That's not what I represented to them.

THE SUPERINTENDENT: Well, weren't they required to pay some money by the terms of the document which they executed?

MR. LAPIN: Yes.

THE SUPERINTENDENT: Well why isn't that a money transaction?

MR. LAPIN: Well if I remember the question it didn't ask if I had ever been involved in a money transaction.

THE SUPERINTENDENT: No, sir, I am asking you now whether the papers that were executed before the notary which you testified to—.

[29] MR. LAPIN: Right.

THE SUPERINTENDENT: By the Colliers had anything to do with the payment of money?

MR. LAPIN: Yes, you might say that.

THE SUPERINTENDENT: Well if it had to do with the payment of money, why isn't this a money transaction?

MR. LAPIN: Well again, in the sense that I understood the question—may I refresh my memory on this?

THE SUPERINTENDENT: You want to look at this?

MR. LAPIN: The question in the application.

THE SUPERINTENDENT: Certainly, certainly, you may.

MR. LAPIN: Have you ever been charged with or accused of, any irregularities in money transactions—it was my understanding that was—, that my dispute with the Colliers was not a money transaction but about the deed to a piece of real estate, and that was my understanding of the dispute. The essence of the dispute—they never claimed that I had taken any money from them or that I had defrauded them out of any money, and that was my understanding of that matter and it was in that context that I answered the question.

THE SUPERINTENDENT: I am not asking you at this time what the Colliers claimed. I am asking you whether or not this lawsuit involved a money transaction? To refresh your memory, sir, I refer you to findings of fact No. 9, on page 3, and I will read it aloud for the record:

"In October 1963 Mr. Lapin sued the Colliers in the Landlord and Tenant Branch of the Court of General Sessions for posses-

sion of the real estate claiming that $204.75 rent was due from them as a monthly tenant for the period [30] September 1, 1963 to October 15, 1963. (This $204.75 suggests a rate of $136.50 per month.) The Colliers made payment to Mr. Lapin and remained in the premises. Even at this time the Colliers were ignorant of the true nature of the papers Mr. Lapin had caused them to sign, and the litigation last above referred to apparently did not alert them to the chicanery of Mr. Lapin (presumably because persons of minimal education like the Colliers commonly refer to trust payments as rent payments)."

Now as I understand what the court said, you were–, had sued the Colliers claiming that they owed you some money, and you had claimed that they owed you this money by reason of some papers which they had executed before the notary on the night that you referred to, now is that right?

MR. LAPIN: Yes, sir.

THE SUPERINTENDENT: Well if they owed you money, why didn't this involve a money transaction?

MR. LAPIN: Again, the question was, "irregularities in money transactions" and that's not the way I understood this suit, they never accused me of any irregularities in money transactions, their whole story was that they had not knowingly signed the deed.

THE SUPERINTENDENT: But did the judge accuse you of irregularities in any money transaction?

MR. LAPIN: You'll have to leave that to the judge's findings.

THE SUPERINTENDENT: Well you're perfectly free to do that?

MR. LAPIN: Uh-huh.

THE SUPERINTENDENT: To refresh your memory, sir, do you want to read it now? According to the findings of fact of the court, the Colliers were in default of some notes and a foreclosure sale was advertised. Mr. Lapin [31] represented to the Colliers that

payments to him by them of $136.50 each month would be necessary in order to him to save their home and that certain papers must be signed. On April 26, 1963 the Colliers signed some papers which included among other things a deed to Mr. Lapin of their property. The Colliers have had minimal education and are ignorant of real estate and general business procedures. James Collier works as a janitor and Annie Mae Collier works as a packing plant laborer, and their work experience has been as unskilled laborers. I am skipping the irrelevant portions. The defendant, Mr. Lapin, is an educated man, experienced in real estate matters, the holder of a real estate broker's license in the District of Columbia and the State of Maryland, and knowledgeable in business and real estate matters. They were led by his representations to believe that he meant to save their home for them, and that he would do so by means of the $136.50 monthly payment they were to make to him, that it would cover the regular monthly payments on the trusts amounting to $111.50 plus an additional $25.00 monthly which additional amount Mr. Lapin was to retain each month until he had been reimbursed for his expenditures in warding off the threatened foreclosure and until he had received reasonable compensation for his services. The signatures of Mr. and Mrs. Collier on the deed to Mr. Lapin were obtained by fraud and misrepresentation as to the import and purpose of the papers they signed. No consideration passed to the Colliers from Mr. Lapin for the contract to sell or for the deed. In other words, Mr. Lapin, without paying the Colliers anything therefor, and without having advanced any money in their behalf, got a deed to their property, and in addition obtained a contract from them whereby they were to buy the property from him at a substantial amount over and above the trusts thereon. [32] The court concludes by saying the action of Mr. Lapin in this case was characterized by oppression, wilfulness, and fraud. Now, are you contending that this litigation did not involve a money transaction?

MR. LAPIN: It was my understanding that the essence of this thing was the dispute about the manner in which the deed passed and the court made a finding of fact which is not the facts but that which the court finds; and so, rather than to pursue it and make an appeal, we settled it.

THE SUPERINTENDENT: I believe you said in response to a previous question that you did not appeal because you didn't think it was worth it, is that what you said?

MR. LAPIN: That's right.

THE SUPERINTENDENT: Were you concerned about your reputation?

MR. LAPIN: It never occurred to me that this would wind up here today, no. It never occurred to me at all.

THE SUPERINTENDENT: You mean, the findings of the court?

MR. LAPIN: Right. Which I hadn't thought about it, certainly, I would have included it.

THE SUPERINTENDENT: You would have appealed if you thought it was going to involve your insurance license?

MR. LAPIN: Oh, if it would have involved my reputation any more than any other civil matter in which a man might be involved in.

THE SUPERINTENDENT: In filling out and swearing to the application for license, Mr. Lapin, did you have any notion at all that—as to the purpose of that application?

MR. LAPIN: Sure.

[33] THE SUPERINTENDENT: What did you think it was needed for?

MR. LAPIN: I thought it was needed to help the people on the Insurance Commission to make a determination about the trustworthiness, character of an individual who might as agent be handling the funds of an insurance company or a client.

THE SUPERINTENDENT: Well having that in mind, Mr. Lapin, didn't it occur to you that it might be relevant to reveal forthrightly at that time that the United States District Court had found that you had practiced fraud, chicanery, oppression, wilfulness, didn't you think that that would have some bearing on a finding as to your trustworthiness?

MR. LAPIN: No, sir. I am not—.

THE SUPERINTENDENT: What was your answer to my question?

MR. LAPIN: My answer is, that I have been in business-world, here in Washington for about 20 years and in the course of 20 years doing business in the District of Columbia I have done business with thousands of homeowners and thousands of different people, and I have been involved in some disputes and I won't say that I was in perfect rapport with everybody I ever talked to or did business with. There have been times when there were disagreements and disputes and this one wound up in litigation because we couldn't find a way to resolve it, but as far as I am concerned my conscience is clear, I never took anything away from the Colliers, and I never intended to.

* * *

[39] THE SUPERINTENDENT: I will take the case under advisement. My decision will be in writing, and this hearing is closed.

* * *

PLAINTIFF'S STATEMENT OF POINTS
ON WHICH SUMMARY JUDGEMENT
CANNOT BE GRANTED

The decision of Jordan v. United Insurance Company of America 110 U.S. App. D.C. 112, 289 F.2d 778 forecloses defendant's right to any summary judgment, and holds that the plaintiff is entitled to a trial denovo before this Court.

The defendant's action was capricious and arbitrary.

The defendant failed to construe plaintiff's answers by giving the plaintiff the benefit of the doubt.

The defendant incorrectly construed the plaintiff's intention in making answers to the questions in the application.

Herman Miller
Attorney for Plaintiff

ORDER

Upon consideration of the motion of defendant Albert F. Jordan for summary judgment, of plaintiff's motion for preliminary injunction of the memorandum of points and authorities in support of and in opposition to the respective motions, of oral argument in open court by counsel for plaintiff and counsel for defendant, and it appearing to the Court that plaintiff is not entitled to a trial de novo and that the decision of the defendant is based on substantial evidence it is, this 16th day of January, 1968,

ORDERED:

1. That defendant's motion for summary judgment be, and the same is, hereby granted.

2. That plaintiff's motion for preliminary injunction be, and the same is, hereby denied.

/s/ George N. Hart
Judge

[Certificate of Service]

PLAINTIFF'S MOTION FOR RECONSIDERATION OR REHEARING OF MOTION FOR SUMMARY JUDGMENT

Comes now the plaintiff by his attorney, and moves the Court for reconsideration and/or rehearing of the defendant's motion for summary judgment which was granted, and as reasons states:

1. The argument of defendant and the basis on which the plaintiff granted summary judgment was that in connection with revocation of plaintiff's license the same was not a proceeding under Title 35-404, on which section Jordan v. United Insurance Company of America 110 U.S. App. D.C. 112, 289 F.2d 778 was decided, and which case holds the licensee was entitled to a hearing before this Court de novo. The argument further was to the effect that the proceedings before the defendant was under Title 35-426 which provided for a hearing, and to give the plaintiff a hearing de novo was to give him two hearings, whereas Section 404 did not provide for such procedure.

However, Section 426 provides that if the applicant is aggrieved by such decision he may appeal to a court of competent jurisdiction under Title 35-427. The plaintiff believes that the Court was not apprised of, nor was Title 35-427 considered. This last section applies in either cases of revocation or suspension, or refusal to grant a license, and the same is not limited to a proceeding under any section the right of appeal is given to United States District Court for the District of Columbia, in equity, * * * and the same shall be tried as an equity case.

Section 426 is applicable to revocation where it is claimed the license was obtained by fraud or misrepresentation, or those claims charged against the plaintiff by the defendant. Section 427 requires the matter to be "tried as an equity case" There is no provision in any of the sections that application to this Court is in nature of a judicial review of the decision of the Insurance Commissioner. In Section 404 it was contended that there was no specific jurisdiction to review the action of the Commissioner, and it was held that the general jurisdiction was ample. But section 427 gives this Court specific jurisdiction setting up the procedure and tried as an equity case; no jurisdiction was specified in such appeals to review of the Commissioner's order as to whether it was arbitrary or capricious, but the requirement is that there should be a trial as in equity, and such requirement is most certainly not in the provision of a review.

We contend that Sections 426 and 427 being read together and 426 refers to 427 and the Court is required to have a trial de novo.

Respectfully submitted

Herman Miller
Attorney for Plaintiff

[Certificate of Service]

POINTS AND AUTHORITIES

Section 426 of Title 35 deals with suspensions and revocations and among the reasons are those cited by the defendant in this case. Section 426 expressly provides that appeals from any order under this section may be appealed as provided in Section 427. In this last section and this is a proceeding in equity, not a proceeding for a judicial review. The section also expressly states the matter shall be tried as an equity case, and in such event the superintendent is designated as defendant, and the aggrieved agent is designated as plaintiff. Right of appeal is also given from the judgment of the District Court to United States Court of Appeals for the District of Columbia. It is significant, that totally absent is any language which indicates such proceedings are in nature of an appeal or review of an administrative order.

It is further pointed out, as was done in Columbia Auto Loan v. Jordan, 90 U.S. App. D.C. 222, 196 F.2d 568, that the present action is no request for an appeal from the order of the Commissioner or any proceeding to test the Commissioner's action. The present complaint is made broadly and seeks the full measure of relief, and since these proceedings are equitable in nature and in equity and therefore a full hearing is required. The Court in Jordan v. United Insurance Co., did not negate a trial de novo under Title 35-427, it merely stated it did not have to reach this question.

/s/ Herman Miller
Attorney for Plaintiff

ORDER

Upon consideration of the motion of the plaintiffs for reconsideration or rehearing of motion for summary judgment filed by the defendant, of defendant's opposition thereto, of the other pleadings filed herein and of the failure of counsel for the plaintiff to appear for the scheduled hearing of oral argument on the subject motion, it is, this 21 day of March, 1968,

ORDERED: That plaintiff's motion for reconsideration or rehearing of motion for summary judgment be, and the same is, hereby denied.

/s/ George N. Hart
Judge

[Certificate of Service]

NOTICE OF APPEAL

Notice is hereby given this 18th day of April, 1968, that Earl M. Lapin hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 16th day of January, 1968 and an order denying motion for consideration dated March 21st, 1968 in favor of Albert F. Jordan, Superintendent of Insurance against said Earl M. Lapin.

/s/ Herman Miller
Attorney for Plaintiff

PRETRIAL PROCEEDINGS FROM CIVIL ACTIONS
NOS. 2459-64 - 1293-65

PRETRIAL PROCEEDINGS

STATEMENT OF NATURE OF CASE:

Consolidated actions:

C.A. 2459-64 - To set aside deed for fraud and for accounting and damages;

CA 1293-65 - For possession of real estate (plea of title).

UNDISPUTED FACTS:

Prior to April 26, 1963, James Clarence Collier and Annie Mae Collier, his wife, were the record title owners, as tenants by the entireties, of Lot 79 in Square 3520, improved by premises 49 Quincy Place, N.E., in the District of Columbia.

The property had been acquired by the Colliers by deed dated October 6, 1959, from Saul and Helen Lehrman. Settlement was made on said sale at the Real Estate Settlements, Inc., Case No. 1179, on October 6, 1959. The total purchase price was $11,950.00, of which the Colliers paid $796.78 cash, including a deposit of $375.00, assuming a first deed of trust to secure Perpetual Bldg. Assn. in the amount of $6,000, and giving a second trust to the sellers in the amount of $5,450.00 for the balance.

On April 26, 1963, there was due on the Perpetual first trust a principal balance of $5,389.20, plus interest from April 22, 1963, and due on the second trust a principle balance of $4,416.89 with interest from March 26, 1963. The Colliers were in default on their payments on the second trust note, and also on the first trust.

Under date of April 15, 1963, one of the trustees on the second deed of trust, Harris S. Kassel, wrote to the Colliers informing them that the sum of $171 was overdue on the first trust and $218

due on the second trust, or a total of $389, and stating that unless the sum of $389 was received within five days, he would start foreclosure proceedings.

Some time between April 15 and April 26, 1963, Earl M. Lapin saw the Colliers at their house.

On or about April 26, 1963, the Colliers gave to Mr. Lapin $100 in cash, receiving a receipt therefor.

Under date of April 26, 1963, James Clarence Collier and Annie Mae Collier affixed their signatures to a form of deed conveying the realty to Earl M. Lapin. Said deed was recorded on April 29, 1963.

After April 29, 1963, for some period, the Colliers paid to Mr. Lapin the sum of $136.50 per month, in installments of $68.25 on the first and fifteenth. During the period up to Oct. 1, 1964, the Colliers paid to Lapin $2,396.31. The Colliers' payments were noted by Lapin or his wife in a book which has been identified as Colliers' PT Exhibit No. 5.

Up to Oct. 1, 1964, Lapin paid the following:

Perpetual Bldg. Assn. (1st trust)	$ 1,197.00
Second trust payments (Lehrman)	1,199.00
	$ 2,396.00
Thomas J. Owen & Son (auctioneer)	76.28
	$ 2,472.28

On October 7, 1963, Lapin filed a complaint for possession of real estate (No. LT71946-63) in the Court of General Sessions, claiming $204.75 rent due for the period September 1, 1963 to October 15, 1963. The Colliers made payment to Lapin and remained in the premises.

On September 11, 1964, Lapin had addressed a letter to Ps advising them that he was the landlord of the premises occupied then as "tenant by the month", and giving 30 days notice to vacate the premises, said notice to expire October 14, 1964.

Thereafter on October 7, 1964, the Colliers filed C.A. 2459-64, the complaint to set aside the alleged deed to Lapin.

On November 12, 1964, Lapin filed a new complaint for possession of real estate, L&T No. 83914-64 asserting the Colliers held possession of the premises as tenant by sufferance. The Colliers filed a plea of title in answer, which was transferred to this Court as C.A. 1293-65.

Thereafter the Colliers remained in possession of the premises, and have been paying on the first and second trust the only payment which is now due being the March 15 payment on the second trust.

C.A. 2459-64:-Collier v. Lapin:

PLAINTIFFS assert that shortly after they were informed by the trustee under the second deed of trust that foreclosure proceedings would be instituted unless their payments were brought current, they were contacted by Earl M. Lapin at their home, as a benefactor offering to assist them with a loan to prevent foreclosure; that Ps gave to D $100 in cash and signed a paper which D represented was necessary to his efforts in arranging a loan or saving their property for them; that thereafter Ps paid to D $136.50 per month, which they understood to be for the two trust payments, which totalled $111.50 per month, and $25.00 per month for repayment to D of money loaned or disbursed by him to prevent a foreclosure;

That at no time did Ps intend to or know that they had executed a deed of the property to defendant; that their signature to the deed was obtained by fraud and misrepresentation of D; that they did not know that they had executed a deed until after they had secured counsel in this case, who advised them of the alleged deed of April 26, 1963.

Plaintiffs assert that they are ignorant of real estate matters, have a minimal education and work as laborers, whereas defendant is knowledgeable in real estate matters.

Plaintiffs ask judgment:

(1) Declaring the alleged deed of April 26, 1963, recorded April 29, 1963, void and of no legal effect and setting the same aside, and ordering defendant to reconvey the property to plaintiffs.

(2) An accounting of the monies paid by plaintiffs to defendant.

(3) For judgment against D for damages fn the amount indicated in said accounting plus Ps' expenses in this action, including reasonable attorney's fees and costs, plus punitive damages in an amount to be fixed by the Court.

DEFENDANT denies all allegations of fraud and misrepresentation and denies that plaintiffs are entitled to any of the relief prayed.

Defendant Lapin asserts that the transaction between him and the Colliers was entered into by Ps Collier with full disclosure by D Lapin and full knowledge on the part of Colliers as to the nature of the transaction. D Lapin asks that the complaint in C.A. 2459-64 be dismissed.

C.A.1293-65 (GS No. LT 83914-64) Lapin v. Collier

PLAINTIFF LAPIN asks judgment for possession of the premises and rent due from October 1964 to date at $136.50 per month, plus accumulated arrears to October 1964 in the amount of $148.04.

DEFENDANTS COLLIER deny that P Lapin is entitled to any of the relief prayed, on the basis of the facts alleged with reference to their complaint in C.A. 2459-64, asserting that they are the true owners of the premises.

STIPULATIONS:

Facts under "UNDISPUTED FACTS".

It is stipulated the following may be admitted without formal proof of authenticity, subject to all other objections:

Collies' PT Exhibits:

No. 1 - deed dated Oct. 6, 1959 from Lehrmans to Colliers
No. 2 - settlement sheet of Realty Estates Settlements, Inc. dated October 6, 1959
No. 3 - letter dated April 15, 1963 from Kassel to Colliers
No. 4 - receipt for $100 paid Lapin April 26, 1963
No. 5 - payment book, Empire Realty Service, Inc.
No. 6 - letter of September 11, 1964 from Lapin to Colliers
No. 7 - copy of deed dated April 26, 1963 signed by Colliers, attached to complaint

Lapin's PT Exhibits:

Stipulated only that signatures appear to be genuine (not seen before 3/22/66; copies to be shown Colliers prior to trial).

No. 1 - sales contract dated April 26, 1963, Colliers to Lapin
No. 2 - sales contract dated April 26, 1963, Lapin to Colliers
No. 3 - bill of Thomas J. Owen & Son, Inc. (receipted)
No. 4 - copy of L&T 71946-63, complaint for possession

Any other documents initialled by both counsel prior to trial.

Counsel agree to exchange on or before April 6, 1966, the names and addresses of all witnesses known to them, including expert witnesses but exclusive of impeachment witnesses (filing a copy of said list with the Clerk of the Court), and if they learn of any additional witnesses prior to trial, they will advise the Clerk and opposing counsel the names and addresses promptly and prior to trial.

The Examiner has requested counsel to come to the trial with the maximum authority to settle the case which will be allowed them by their principals.

/s/ Elizabeth Bunter
Assistant Pretrial Examiner

Trial Attorneys:
/s/ Lyon L. Tyler, Jr., For Colliers
/s/ Alfred S. Fried, for Lapin

DEFENDANT'S EXHIBIT "E"

CERTIFIED
NO. 705366

November 21, 1968

Mr. Earl M. Lapin
4021 Wilson Boulevard
Arlington, Virginia 22203

Dear Sir:

I have fully considered the evidence adduced at the hearing held in this office on November 14, 1967, in which you

participated and of which notice was given to you under date of October 23, 1967. From the evidence, I find as facts that:

1. In response to a question in a license application which you filed with this department under date of January 5, 1967, you falsely stated under oath that you had never been arrested for or charged with any offense against the laws of the District of Columbia when, in fact, you had been so charged and actually had forfeited collateral thereon;
2. In response to a question on the said license application form, you falsely stated under oath that you had never been charged with or accused of any irregularities in money transactions when, as a matter of fact, you had been so charged and accused in connection with real estate transactions between you and Mr. and Mrs. James C. Collier; and
3. Your conduct in connection with the said Collier transactions was characterized by The United States District Court in civil action No. 2459-64, filed July 29, 1966, as constituting chicanery, oppression, wilfulness, misrepresentation, and gross fraud.

Based on the findings of fact made herein, I conclude that:

(a) Your license was obtained by material misrepresentations which, if they had been discovered at the time of your application, would have constituted ample ground for refusal to issue the license applied for; and that,

(b) You have shown yourself to be an untrustworthy person.

Your insurance agent's license is hereby revoked.

Very truly yours,

Albert F. Jordan
Superintendent of Insurance

cc: Lyman J. Umstead, Esq.,
Assistant Corporation Counsel, D.C.

Herman Miller, Esq.
421 - 4th Street, N.W.,
Washington, D.C., 20001

Mr. William H. Creamer, III, General Manager
New York Life Insurance Company
4021 Wilson Boulevard
Arlington, Virginia 22203

AFJ:n

DEFENDANT'S EXHIBIT "F"
Civil Action No. 3-28-67

METROPOLITAN POLICE DEPARTMENT, D.C.

NAME: LAPIN Earl M.
(LAST) (FIRST) (MIDDLE)

ADDRESS 257 Hawaii Ave. NE

IDENT. NO.

ALIASES

RACE: W X, C, FB — MARRIED X, DIVORCED, SINGLE X — READ Y, WRITE Y — SEX: M X, F

(HEIGHT)	(WEIGHT)	(HAIR)	(EYES)	(COMPLEXION)
		9	1?	26

(PROMINENT SCARS, DEFORMED OR MISSING LIMBS, ETC.) — (BIRTHPLACE) Miami Fla — (MONTH) — (DAY) — (YEAR)

(MOTHERS NEE NAME) — (BIRTHPLACE) — (SOCIAL SECURITY NUMBER)

(FATHERS NAME) — (BIRTHPLACE) — (ARMED SERVICE OR MERCHANT MARINE NUMBER)

(OCCUPATION) contractor — OPERATORS PERMIT (STATE AND NUMBER) — (DATE)

PCT.	CASE NO.	DATE	AGE	OFFENSE	COMPLAINANT	OFFICER	FINAL DISPOSITION
[illegible]	30958	11/20/52	26	no elect permit	Steele EL	Steele BD	EFS25

PD 252 (OVER) P-3751

BRIEF FOR APPELLEE

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 21,976

EARL M. LAPIN,

Appellant,

v.

ALBERT F. JORDAN,
Superintendent of Insurance,

Appellee.

Appeal From The United States District Court
For The District Of Columbia

CHARLES T. DUNCAN,
Corporation Counsel, D. C.

HUBERT B. PAIR,
Principal Assistant Corporation
Counsel, D. C.

RICHARD W. BARTON,
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District Building,
Washington, D. C. 20004

COUNTER-STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether a licensee who, prior to revocation of his license to sell life insurance, was accorded a statutorily prescribed administrative hearing which was consistent with procedural and substantive due process of law is entitled thereafter to a de novo hearing before the District Court.

I N D E X

Page

SUBJECT INDEX

CASES CITED

DISTRICT OF COLUMBIA CODE, 1967, CITED

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BRIEF FOR APPELLEE

COUNTER-STATEMENT OF THE CASE

Proceedings before the District Court

On December 11, 1967, Earl M. Lapin, who had been licensed as an insurance solicitor in the District of Columbia, filed in the United States District Court for the District of Columbia a "Complaint Contesting Validity of Order of Superintendent of Insurance and for Injunction" (J. A. 1-3). Attached thereto was a "Motion for a Preliminary Injunction" (J. A. 4). In his complaint, Lapin alleged that on Novem-

ber 21, 1967, following a hearing before the Superintendent, his license authorizing him to sell life insurance in the District of Columbia was wrongfully, fraudulently, arbitrarily, and capriciously revoked (J. A. 3). The substance of the relief sought was (a) a preliminary and permanent injunction restraining the Superintendent from revoking his insurance agent's license and (b) a hearing de novo in the District Court relative to the revocation of his license.

On December 21, 1967, the Superintendent responded by filing a motion for summary judgment, attaching thereto the administrative record of the proceedings held before the Superintendent on the order to show cause why Lapin's license should not be suspended or revoked (J. A. 5).

The trial judge, upon consideration of the motion of the Superintendent for summary judgment, Lapin's motions for preliminary injunction, the various memoranda of counsel, and oral argument by counsel, granted the Superintendent's motion for summary judgment and denied both Lapin's motion for a preliminary injunction and for a trial de novo (J. A. 37-38). Subsequently, the court also denied Lapin's motion for reconsideration or rehearing of the motion for summary judgment (J. A. 41).

This appeal followed (J. A. 41).

Proceedings before the Superintendent

(1) Lapin's application for licensure as an insurance agent.

On January 5, 1967, Lapin swore to, and submitted to the Superintendent of Insurance, an application for licensure to sell life insurance in the District of Columbia. Among the questions listed thereon, with Lapin's sworn responses, were the following:

> "7. (a). Exclusive of all traffic violations, have you ever been arrested for, charged with, or convicted of any offense whatever against the laws of the District of Columbia, the United States Government, or of any other jurisdiction?" [Emphasis in original.]
>
> Appellant responded to this question: "No."
>
> "8(A). Have you ever been charged with or accused of, any irregularities in money transactions including, but not limited to, the giving of worthless checks? (If so, give full particulars on an attached sheet.)"
>
> Appellant responded to this question: "No." (J. A. 8.)

Shortly after Lapin filed his application, the Superintendent issued to him a license to sell life insurance in the District of Columbia (appellant's brief, p. 2).

(2) Notice of Lapin to appear and show cause why his insurance agent's license should not be suspended or revoked.

After Lapin had been licensed for a period of approximately ten months, he was notified on or about October 23, 1967, to appear before the Superintendent of Insurance to show cause why his insurance agent's license should not be suspended or revoked on the grounds that his license was obtained by misrepresentation, and that he demonstrated his unworthiness for licensure, having falsely sworn in his application that:

> "(a) [he] * * * had never been arrested for or charged with any offense against the law when as a matter of fact, on November 20, 1952, * * * [he was] charged with an offense against the laws of the District of Columbia and in connection with that charge * * * elected to forfeit $25; and (b) * * * [he] falsely stated that * * * [he] had never been charged with or accused of, any irregularities in money transactions when, as a matter of fact * * * [he] had been charged with and accused of irregularities in money transactions connected with an attempt * * * in 1963 and 1964 illegally to gain possession of real estate owned by Mr. and Mrs. James C. Collier; and (c), in a decision of The United States District Court for the District of Columbia, Civil Action No. 2459-64, filed July 29, 1966, the Court stated that * * * [he] practiced chicanery, oppression, wilfulness, misrepresentation, and gross fraud in * * * [his] dealings with the said Colliers." (J. A. 7.)

(3) Findings of Fact and Conclusions of Law in Collier v. Lapin, Civil Action No. 2459-64.[1]

Lapin was named the defendant in the above-captioned lawsuit, and the District Court found the facts there as follows:

One James Collier, a janitor, and Annie Mae Collier, his wife and a laborer in a packing plant, purchased in the District of Columbia in 1959, for the sum of $11,950, a house which they occupied as their home (J. A. 10). On April 26, 1963, because they were in default in an amount totaling $389.00 in their payments on notes secured by first and second deeds of trust, a foreclosure sale was advertised (J. A. 11).

Sometime just prior to April 26, 1963, however, Lapin approached the Colliers as a stranger, but, nonetheless, as their ostensible benefactor, and offered to prevent foreclosure on their home. Lapin induced the Colliers to sign a contract to sell and convey their property to him and to repurchase it from him after paying off both trusts and an additional amount agreed upon as the purchase price. (J. A. 11-12.) The necessary papers were signed; the property was conveyed to Lapin,

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[1] The Findings of Fact and Conclusions of Law apply also to Lapin v. Collier, Civil Action No. 1293-65, which was consolidated with Civil Action No. 2459-64.

who recorded the deed in his own name (J. A. 43); and the Colliers began making monthly payments to Lapin totaling $136.50, an amount $25.00 in excess of the amount which they were obligated to pay monthly on their trust notes (J. A. 12).

Less than six months later, in October 1963, Lapin sued the Colliers in the Landlord and Tenant Branch of the District of Columbia Court of General Sessions seeking their ouster from their home because they were then $204.75 in arrears in their payments to him (J. A. 21). The Colliers thereupon remitted the amount due Lapin. Again, about a year later, Lapin addressed a letter to the Colliers advising them that he was the landlord of these premises and ordering them to vacate by October 14, 1964. Upon receipt of the notice to vacate, the Colliers obtained an attorney, who instituted against Lapin in the District Court Civil Action No. 2459-64 to set aside the deed and to seek an accounting, damages and costs. (J. A. 10, 13.)

The trial court there found that the Colliers, on the one hand, had had minimal education and were ignorant of real estate and business practices, and, for that reason, were subject to undue influence and overreaching by Lapin. The court characterized Lapin, on the other hand, as "an educated man, experienced in real estate matters, the holder of a real estate broker's license in the District of Columbia

and the State of Maryland, and knowledgeable in business and real estate matters" (J. A. 11).

The court found specifically that:

> "The Colliers did not understand, believe, or know that they were signing a deed to their property and at no time did they intend to convey their property to the defendant Mr. Lapin. They were led by his representations to believe that he meant to save their home for them, and that he would do so by means of the $136.50 monthly payment they were to make to him, that it would cover the regular monthly payments on the trusts amounting to $111.50 plus an additional $25.00 monthly which additional amount Mr. Lapin was to retain each month until he had been reimbursed for his expenditures in warding off the threatened foreclosure and until he had received reasonable compensation for his services. The signatures of Mr. and Mrs. Collier on the deed to Mr. Lapin were obtained by fraud and misrepresentation as to the import and purposes of the papers they signed." (J. A. 11-12.)

Finally, the trial court concluded that Lapin had obtained the deed to the Collier's property "by means of gross fraud," and, because his conduct was tainted by "oppression, wilfulness, and fraud," he was divested of all right, title, and interest in the premises. Title was then ordered vested in the Colliers, and Lapin was ordered to pay their counsel fees. (J. A. 13-14.) No appeal was taken from this decision by Lapin (J. A. 30).

(4) Hearing before Superintendent of Insurance on the matter of Lapin's license revocation.

One of the reasons that Lapin was asked to appear and show cause why his insurance agent's license should not be suspended or revoked was that, when he made application for licensure, he falsely stated that he had never been charged with an offense against the laws of the District of Columbia (J. A. 7). Lapin conceded at the hearing that he had, in fact, forfeited twenty-five dollars collateral for violation of the District of Columbia Electrical Code (J. A. 22).

Two contradictory reasons were asserted at the hearing for Lapin's failure to note the violation on his application. Lapin's counsel tendered proof that his client did not admit to the violation of his application because he considered it only a minor offense -- in the same category as a traffic offense -- and therefore one which need not be noted (J. A. 18). Lapin, himself, testified, however, that he failed to note the violation because he had forgotten all about the offense. He said: "* * * [I]t never occurred to me to think about it; I certainly hadn't thought about that matter for many, many years." (J. A. 22.)

The second reason that Lapin was asked to appear and show cause why his license should not be suspended or revoked was that he falsely stated that he had never been charged with, or accused of, any irregularities involving money transactions (J. A. 7).

Lapin admitted that he was involved in litigation with the Colliers in the case of Collier v. Lapin, Civil Action No. 2459-64, a case in which the opinion of the court had been rendered July 28, 1966, less than six months before he falsely denied that he had been charged with, or accused of, irregularities involving money transactions (J. A. 8-9, 14, 24). He also admitted the essential facts which engendered the litigation, as set forth in the Findings of Fact and Conclusions of Law (J. A. 10-14, 24-29), and stated on cross-examination that he did not appeal from the court's decision (J. A. 30).

When Lapin was asked why, in executing the application for licensure, he denied having been charged with, or accused of, irregularities involving money transactions, he stated "* * * [I]t was my understanding * * * that my dispute with the Colliers was not a money transaction but about the deed to a piece of real estate, and that was my understanding of the dispute. * * * [I]t was in that context that I answered the question." (J. A. 32.)

Thereafter, the following colloquy occurred:

> THE SUPERINTENDENT [OF INSURANCE]: In filling out and swearing to the application for license, Mr. Lapin, did you have any notion at all * * * as to the purpose of that application?

MR. LAPIN: Sure.

THE SUPERINTENDENT: What did you think it was needed for?

MR. LAPIN: I thought it was needed to help the people on the Insurance Commission to make a determination about the trustworthiness, character of an individual who might as agent be handling the funds of an insurance company or a client.

THE SUPERINTENDENT: Well having that in mind, Mr. Lapin, didn't it occur to you that it might be relevant to reveal forthrightly at that time that the United States District Court had found that you had practiced fraud, chicanery, oppression, wilfulness, didn't you think that that would have some bearing on a finding as to you trustworthiness?

MR. LAPIN: No, sir * * * . (J. A. 35-36.)

(5) Findings of Fact and Conclusions of Law made by the Superintendent in revoking Lapin's insurance agent's license.

After hearing the testimony of Lapin regarding his answering falsely the questions:

> "Exclusive of all traffic violations, have you ever been arrested for, charged with, or convicted of any offense whatever against the laws of the District of Columbia * * * ?
>
> * * * * *
>
> "Have you ever been charged with or accused of, any irregularities in money transactions * * * ?" (J. A. 8.)

the Superintendent found as a fact that Lapin had been charged with an offense and forfeited collateral thereon; and that he had been charged with and accused of irregularities in a money transaction. Accordingly, Lapin's insurance agent's license was revoked on the ground that he was "an untrustworthy person." (J. A. 48-49.)

ARGUMENT

The trial court properly found that Lapin was not entitled to a trial de novo.

Prior to revocation of his license to sell life insurance in the District of Columbia, Lapin was accorded an administrative hearing, preseribed by D. C. Code, § 35-426 (1967), which was fully consonant with procedural and substantive due process of law. He received written notice of the hearing and specification of the charges upon which the proposed revocation was to be based (J. A. 7). He was represented by counsel and granted the right to testify under oath and present evi-

dence in his own behalf. The proceedings were transcribed and a full record preserved. (J. A. 1-36.) The Superintendent made and supplied to Lapin written findings of fact and conclusions of law in support of his decision to revoke (J. A. 48-49).

At no stage of the proceedings was there any suggestion by Lapin that the administrative hearing accorded him was in any way unfair or inconsistent with the requirements of due process. His basic complaint now is, however, that, notwithstanding an administrative due process hearing, he is entitled to a second due process hearing -- a trial de novo -- in the district court. He suggests that a trial de novo is compelled by statute. Such is not the case, however.

The case of Jordan v. United Insurance Company of America, 110 U. S. App. D. C. 112, 289 F. 2d 778 (1961), relied upon by Lapin, is not apposite. There, the Superintendent of Insurance, pursuant to D. C. Code, § 35-404 (1967), notified the insurance company that, on the ground that it was unworthy of public confidence, its certificate of authority to operate and do business in the District of Columbia for the license year beginning May 1, 1959, would not be renewed. The insurance company then requested and was granted a hearing before the Superintendent at which it adduced evidence respecting its qualification for re-certification.

Following the hearing, the Superintendent again refused to re-certify the insurance company to operate and do business in the District of Columbia. Thereafter, the company sought, and was granted, a trial de novo in the district court, which overturned the administrative ruling of the Superintendent. Upon appeal to this Court, the Court held that, while an aggrieved applicant "* * * is not entitled to two due process hearings," the hearing held by the Superintendent was neither authorized nor prescribed under D. C. Code, § 35-404. 110 U. S. App. D. C., supra at 115. The Court concluded that the alleged hearing before the Superintendent lacked the indicia of "due process hearing" and characterized it as being more nearly in the nature of an ex parte investigation rather than a hearing. "The grant of a hearing by defendant [Superintendent]," said the Court, "was gratuitous, and the defendant, by his unilateral action, could not change the law applicable and deprive plaintiff of his right to a hearing before the proper tribunal." Id. at p. 117.

Lapin also cites and relies upon the Court's decision in Jordan v. Silverman, 111 U. S. App. D. C. 132, 294 F. 2d 916 (1961). This case, too, is easily distinguishable for the same reason as is Jordan v. United Insurance Company of America, supra. In Silverman, just as in the latter case, the district court granted a trial de novo from an

administrative determination of the Superintendent denying renewal of licensure. Similarly, in Silverman, just as in Jordan v. United Insurance Company of America, supra, the grant of an administrative hearing was "gratuitous."[2]

As previously stated, in the case at bar, the relevant statute (D. C. Code, § 35-426 (1967)), unlike that in United Insurance Company of America, supra, or in Silverman, supra, specifically prescribes that a license to sell insurance in the District of Columbia shall not be revoked or suspended unless the Superintendent "* * * shall give to such person an opportunity to be fully heard, and to introduce evidence in his behalf." Lapin was, accordingly, provided an administrative hearing which was, as the record shows, fully consistent with procedural and substantive due process. Had he in this case been granted a trial de novo in the district court, he would have obtained an additional or extra due process hearing to which this Court said in

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[2] The Superintendent initiated the proceedings in Silverman under the same provisions (D. C. Code, § 35-404) relied upon in Jordan v. United Insurance Company of America, supra. This Court said in Silverman, supra, at fn. 3, however, that the proceedings should have been initiated under the provisions of D. C. Code, §§ 35-425 and 427. None of these three sections either provide for, or require, an administrative hearing.

United Insurance Company of America, 110 U. S. App. D. C, supra, at p. 115, he is not entitled.

The trial court properly, therefore, rejected Lapin's request for a trial de novo in that court.

Lapin's only remaining contention that there existed in the district court genuine issues of material fact which precluded the award of summary judgment is entirely without merit.

CONCLUSION

Upon the foregoing, it is respectfully submitted that the judgment of the court below was correct and should, therefore, be affirmed.

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